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**IN THE
COURT OF APPEALS OF INDIANA**

GARY COMMUNITY SCHOOL
CORPORATION AND BANNEKER
ELEMENTARY SCHOOL,

Appellants-Defendants,

VS.

No. 45A03-0605-CV-226

WILLIAM MARSHALL and VALERIE
GOOCH GREEN, individually and as parents of
MONTEVIUS GOOCH MARSHALL,

Appellees-Plaintiffs.

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Jeffrey J. Dywan, Judge
Cause No. 45D11-0309-CT-00201

NOVEMBER 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Gary Community School Corporation (“the School Corporation”) appeals a verdict in favor of Plaintiffs-Appellees William Marshall and Valerie Gooch Green, individually and as parents and natural guardians of Montevius Gooch Marshall (“Montevius”; collectively, “the Marshalls”). We affirm.

The School Corporation raises three issues for our review, which we consolidate, renumber, and restate as:

- I. Whether the trial court erred in determining that the School Corporation did not have immunity pursuant to Ind. Code § 34-13-3-3(10).
- II. Whether, as a matter of law, Marshall presented sufficient evidence to establish the School Corporation’s duty of supervision.¹

On April 1, 2003, Montevius, a first grade student in Gary, Indiana’s Banneker Elementary School, attended a sock hop in the school’s gymnasium. Thirty minutes after his arrival, Montevius was injured when a fellow student rammed his face into a wall. The injuries included fractures of two teeth, loosening of two teeth, and a fracture of the maxillary alveolar plate. The sock hop, which occurred during the students’ lunch hours, was authorized by the School Corporation as a student council activity.

Brenda Edwards, a twenty-year-old college student and permanent substitute teacher at Banneker, was assigned by the school to supervise the sock hop. She also accepted each student’s \$1.00 entry fee. During the first lunch hour, which was designated for first through third graders, approximately sixty students attended the sock

¹ The School Corporation also alleges that the trial court erred in denying its motion for judgment on the evidence. Our resolution of Issue II resolves this issue.

hop. Edwards was the only adult in attendance, and immediately prior to Montevius's injury, she was counting money while sitting at a desk near the gymnasium's entrance instead of observing the students. Neither Banneker School's principal nor the school administration officials gave Edwards any instruction on how to supervise the event. A teacher did tell Edwards that the students were not allowed to run or play basketball during the event.

The Marshalls filed a civil action against the School Corporation, alleging that the school was negligent in failing to properly supervise the sock hop.² The jury found in favor of the Marshalls, and awarded them \$95,000 in damages. The School Corporation now appeals.

I.

The School Corporation contends that it should have been granted immunity under Ind. Code § 34-13-3-3(10), which states that a governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from "the act or omission of anyone other than the governmental entity or the governmental entity's employee." The School Corporation argues that Montevius's injuries were caused by Coleman, not by the employees of Banneker School.

The School Corporation's argument misses the point of the Marshalls' complaint. The negligence which the Marshalls allege is the School Corporation's own negligence in

² Banneker Elementary School was also named as a defendant. However, Ind. Code § 20-5-2-2(1) provides that a legal claim by or against any individual school shall be filed as a lawsuit in the name of the school corporation. Banneker Elementary School is not a party to this appeal.

failing to properly supervise the children during the sock hop. This failure created the conditions that led to the foreseeable act by a virtually unsupervised first grader; thus, the School Corporation is not immune because it was its failure to properly supervise that was the proximate cause of Montevius's injuries. *See Maroon v. State Department of Health*, 411 N.E.2d 404, 417 (Ind. Ct. App. 1980) (holding that a governmental agency was not immune from suit when its negligence resulted in a mental patient's escape and the subsequent death of the victim by the patient's hand); *see also Witco Corp. v. City of Indianapolis*, 762 F.Supp. 834, 838 (S.D. Ind. 1991) (holding that the City was not immune from suit when its own negligence in allowing property to become a fire hazard created the condition which resulted in foreseeable occurrence of vagrants igniting the fire).

II.

The School Corporation contends that the Marshalls failed, as a matter of law, to present evidence sufficient to allow the jury to conclude that the School had breached its duty to Montevius. The School Corporation cites *Norman v. Turkey Run Community School Corp.*, 274 Ind. 310, 411 N.E.2d 614 (1980) and *Miller v. Griesel*, 261 Ind. 604, 308 N.E.2d 701 (1974) for the proposition that schools are intended neither to be insurers of the safety of their students nor to be strictly liable for any injuries that may occur to students.

The tort of negligence is comprised of three elements: (1) a duty on the part of a defendant in relation to the plaintiff; (2) failure on part of the defendant to conform its

conduct to the requisite standard of care required by the relationship; and (3) injury to the plaintiff resulting from that failure. *Miller*, 308 N.E.2d at 706.

The relationship between the School Corporation and Montevius is one which “invokes the well-recognized duty in tort law that persons entrusted with children, or others whose characteristics make it likely that they may do somewhat unreasonable things, have a responsibility recognized by the common law to supervise their charges.” *Dibortolo v. Metropolitan School District of Washington Township*, 440 N.E.2d 506, 509 (Ind. Ct. App. 1982) (citing *Norman*, 411 N.E.2d at 616). Thus, the School Corporation had a duty to exercise reasonable care and supervision for the safety of the children under its tutelage. *See id.* Although our Supreme Court noted in *Miller* that schools are not intended to be insurers of the safety of their pupils or to be strictly liable for injuries that may occur to them, the Court held that the appropriate standard is “whether a defendant exercised [its] duty with the level of care that an ordinary prudent person would under the same or similar circumstances.” *Id.*

In *Norman*, a second grade student was injured when she collided with another student on the playground during a supervised recess. The court noted that the evidence showed that there were 7 or 8 teachers supervising the 188 students during the recess and that the “instantaneous” nature of the accident prevented the teachers from warning either student. 411 N.E.2d at 615. The court concluded that summary judgment in favor of the defendants was appropriate because there was no set of facts presented to the jury whereby it could be said “that a duty arose on any of the teachers or all of them to pay particular attention to a particular student who was running.” *Id.* at 18. The court further

concluded that “[a] duty to warn contemplates an opportunity to know of the danger and to have time to communicate it.” *Id.*

In *Miller*, a fifth grade student was injured in an explosion of a detonator cap at a time when ten students were periodically supervised while working on a school project during a recess period. The court examined whether the plaintiff introduced evidence sufficient, as a matter of law, to enable a jury to find that the elements of negligence had been established. 308 N.E.2d at 707. The court noted that in determining what constitutes due care and adequate supervision depends upon (1) the circumstances surrounding the incident such as the number and age of the students left in the classroom, (2) the activity in which they were engaged, (3) the duration of the period in which they were left without supervision, (4) the ease of providing some alternative means of supervision, and (5) the extent to which the school has implemented guidelines and resources to insure adequate supervision. *Id.* The court held that the trial court was correct in granting the defendant’s motion for directed verdict because the plaintiff failed to show the actual length of time the students were left unattended or that the students were engaged in an activity that would warrant increased supervision. *Id.*

Here, the School Corporation provided only Edwards, a twenty-year old college student, to supervise approximately sixty students. Furthermore, there is evidence to show that at the time that Montevius was injured, Edwards was seated at a desk near the gym doors concentrating on counting the money collected and was not observing the students. Coleman approached Montevius and his friends and requested that they play tag with him. Montevius told him “no.” Coleman again approached Montevius, only to

be blocked by one of Montevius' friends. As Montevius proceeded to dance with one of the girls, an apparently frustrated Coleman, ran up and rammed Montevius into the wall. The evidence is sufficient to allow a jury to determine that the School Corporation's provision of only one supervisor created an unsafe environment where, over a period of time when he was unobserved by the single supervisor distracted by her other duties, a first-grade student could become frustrated by the actions of other students, which were also unobserved, and could react in accordance with that frustration. Thus, we conclude that the trial court was correct in allowing this case to go to the jury. We further conclude that the evidence supports the jury's verdict and that the School Corporation failed to show that it should prevail as a matter of law.

Affirmed.

DARDEN, J., and RILEY, J., concur.